

**ASSEMBLY BILL**

**No. 834**

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**Introduced by Assembly Member Williams**

February 21, 2013

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An act to amend Sections 17203, 17204, and 17206 of, and to add Section 7110.05 to, the Business and Professions Code, relating to energy efficiency standards.

LEGISLATIVE COUNSEL'S DIGEST

AB 834, as introduced, Williams. Energy efficiency standards: unfair business practice.

(1) Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law prohibits certain actions by licensed contractors and subjects a licensee to discipline for a violation thereof. Existing law authorizes the board to issue a citation for a violation of the Contractors' State License Law and to issue civil penalties. Existing law provides for the State Energy Resources Conservation and Development Commission (Energy Commission) within state government and requires the Energy Commission proscribe energy efficiency standards.

This bill would subject a licensee to discipline for the failure to comply with specified energy efficiency standards under the California Code of Regulations. The bill would require the board to submit an annual report to the Legislature with regard to any civil penalties assessed against a licensee or unlicensed person for a violation of those standards. The bill would require the Energy Commission to collaborate with the board to identify and investigate the failure of licensees and unlicensed contractors to comply with those standards.

(2) Existing law defines an act of unfair competition as including an unlawful, unfair, or fraudulent business act or practice, an unfair, deceptive, untrue, or misleading advertisement, and other specified conduct relating to representations made to the public. Existing law authorizes the Attorney General, certain local prosecutors, a private plaintiff with an injury-in-fact, or a plaintiff representative who meets certain standing requirements to bring an action against any person who engages, has engaged, or proposes to engage in unfair competition, provides for injunctive relief, and authorizes the court to make any order or judgment that is necessary to restore to any person in interest any money or property that may have been acquired by means of the unfair competition. Civil penalties may also be collected by the Attorney General and the local prosecutors, as specified. A portion of the civil penalties collected by the Attorney General are deposited into the Unfair Competition Law Fund, and, upon appropriation by the Legislature, are used to support investigations and prosecutions of consumer protection laws.

The bill would authorize the Energy Commission to bring an action under the unfair competition laws to enforce any statute or regulation that the commission is directed to adopt, implement, administer, or enforce. The bill would authorize the Energy Commission to collect civil penalties for a violation thereof and, upon appropriation by the Legislature, would authorize the expenditure of those moneys by the commission for purposes of enforcement.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature to enact  
2     legislation that maximizes the energy saved by the state's various  
3     energy efficiency statutes, regulations, and programs.  
4     SEC. 2. The Legislature finds and declares all of the following:  
5     (a) California's building energy efficiency standards, specified  
6     in Part 6 of Title 24 of, and Article 4 of Chapter 4 of Division 2  
7     of Title 20 of, the California Code of Regulations, respectively,  
8     represent a state resource for accomplishing increased energy  
9     efficiency in newly constructed buildings, additions, and alterations  
10    to existing buildings, and in appliances. These standards are  
11    recognized as leading the nation in energy savings and serving as

1 one of the primary energy policy tools that has resulted in  
2 California's per capita energy use staying essentially constant over  
3 the past 30 years while that of the rest of the United States  
4 increased steadily.

5 (b) The effectiveness of the building energy efficiency standards  
6 is dependent on the conscientious efforts of licensed contractors  
7 in California to build buildings and install components and  
8 equipment in compliance with the standards.

9 (c) The Governor and the Legislature recognize that many  
10 buildings are being retrofitted without required permits. Contractors  
11 operating in the underground economy are in flagrant violation of  
12 California contracting law. In particular, these are contractors  
13 operating without a license, and those, whether licensed or not,  
14 that willfully and deliberately fail to obtain a building permit and  
15 willfully and deliberately fail to comply with the building laws  
16 and other laws of the state. Unlicensed and licensed contractors  
17 who market their services with these underground practices engage  
18 in unfair competition, undercutting legitimate contractors who  
19 endeavor to conscientiously comply with contracting, building,  
20 and business laws. This underground activity denies state and local  
21 governments license and building permit revenue, diminishing the  
22 ability of state and local agencies to provide enforcement services  
23 intended to protect consumers by ensuring compliance with these  
24 laws. These practices particularly damage and diminish the  
25 potential for conscientious compliance with the building energy  
26 efficiency standards.

27 (d) The mission of the Contractors' State License Board is to  
28 protect consumers by regulating contractors to promote the health,  
29 safety, and general welfare of the public in matters related to  
30 construction. As a part of fulfilling this mission, it is important for  
31 the board's licensing program to include efforts to eradicate the  
32 underground practice of performing construction work without  
33 building permits and failing to comply with the building energy  
34 efficiency standards. It has become critically important for the  
35 board to send a strong, definitive message to those whose objective  
36 is illegal financial gain at the expense of safe building practices  
37 and energy efficiency. In particular, the board should not tolerate  
38 illegal practices related to building energy efficiency standards.

39 (e) These violations result in a substantial financial loss to  
40 consumers who purchase energy efficiency goods and services,

1 and represent unfair competition that dramatically impacts the  
2 economic viability of legitimate businesses. It is critical for  
3 California to maintain a business climate favorable to legitimate  
4 competition, so that conscientious contractors, manufacturers,  
5 distributors, retailers, Home Energy Rating System raters, and  
6 other businesses are able to sustain their businesses against unfair  
7 competition.

8 SEC. 3. Section 7110.05 is added to the Business and  
9 Professions Code, to read:

10 7110.05. (a) The failure of a licensee to comply with the  
11 building energy efficiency standards specified in Part 6 of Title  
12 24 of the California Code of Regulations constitutes a cause for  
13 disciplinary action.

14 (b) (1) Beginning with the fiscal year commencing on July 1,  
15 2014, and each fiscal year thereafter, the board shall compile the  
16 essential data necessary to create a report identifying the number  
17 of civil penalties that the board assessed during the previous fiscal  
18 year against licensees and unlicensed contractors for failure to  
19 comply with the standards described in subdivision (a) of this  
20 section and subdivision (b) of Section 7028.7. This report shall be  
21 submitted to the Legislature no later than the first business day in  
22 October of each year.

23 (2) The report to be submitted pursuant to this subdivision shall  
24 be submitted in compliance with Section 9795 of the Government  
25 Code.

26 (c) The State Energy Resources Conservation and Development  
27 Commission shall collaborate with the board to identify and  
28 investigate the failure of licensees and unlicensed contractors to  
29 comply with the building energy efficiency standards and to obtain  
30 building permits, and conduct an education and awareness  
31 campaign to increase knowledge of permitting requirements among  
32 contractors and consumers.

33 SEC. 4. Section 17203 of the Business and Professions Code  
34 is amended to read:

35 17203. Injunctive Relief—Court Orders

36 Any person who engages, has engaged, or proposes to engage  
37 in unfair competition may be enjoined in any court of competent  
38 jurisdiction. The court may make such orders or judgments,  
39 including the appointment of a receiver, as may be necessary to  
40 prevent the use or employment by any person of any practice which

constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, ~~or by any district attorney, county counsel, city attorney, or city prosecutor in this state.~~ *state, or by the State Energy Resources Conservation and Development Commission to enforce any statute or regulation that the commission is directed to adopt, implement, administer, or enforce.*

SEC. 5. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, *City Attorneys, or the State Energy Resources Conservation and* ~~City Attorneys Development Commission~~

Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, or by *the State Energy Resources Conservation and Development Commission, or by* a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

SEC. 6. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in

1 the name of the people of the State of California by the Attorney  
2 General, by any district attorney, by any county counsel authorized  
3 by agreement with the district attorney in actions involving  
4 violation of a county ordinance, by any city attorney of a city  
5 having a population in excess of 750,000, by any city attorney of  
6 any city and county, or, with the consent of the district attorney,  
7 by a city prosecutor in any city having a full-time city prosecutor,  
8 *or by the State Energy Resources Conservation and Development*  
9 *Commission to enforce any statute or regulation that the*  
10 *commission is directed to adopt, implement, administer, or enforce,*  
11 in any court of competent jurisdiction.

12 (b) The court shall impose a civil penalty for each violation of  
13 this chapter. In assessing the amount of the civil penalty, the court  
14 shall consider any one or more of the relevant circumstances  
15 presented by any of the parties to the case, including, but not  
16 limited to, the following: the nature and seriousness of the  
17 misconduct, the number of violations, the persistence of the  
18 misconduct, the length of time over which the misconduct occurred,  
19 the willfulness of the defendant's misconduct, and the defendant's  
20 assets, liabilities, and net worth.

21 (c) If the action is brought by the Attorney General, one-half of  
22 the penalty collected shall be paid to the treasurer of the county in  
23 which the judgment was entered, and one-half to the General Fund.  
24 If the action is brought by a district attorney or county counsel,  
25 the penalty collected shall be paid to the treasurer of the county in  
26 which the judgment was entered. Except as provided in subdivision  
27 (e), if the action is brought by a city attorney or city prosecutor,  
28 one-half of the penalty collected shall be paid to the treasurer of  
29 the city in which the judgment was entered, and one-half to the  
30 treasurer of the county in which the judgment was entered. The  
31 aforementioned funds shall be for the exclusive use by the Attorney  
32 General, the district attorney, the county counsel, and the city  
33 attorney for the enforcement of consumer protection laws. *If the*  
34 *action is brought by the State Energy Resources Conservation and*  
35 *Development Commission, the penalties collected under this*  
36 *section, upon appropriation to the commission by the Legislature,*  
37 *shall be used by the commission to enforce any statute or*  
38 *regulation that the commission is directed to adopt, implement,*  
39 *administer, or enforce.*

1 (d) The Unfair Competition Law Fund is hereby created as a  
2 special account within the General Fund in the State Treasury. The  
3 portion of penalties that is payable to the General Fund or to the  
4 Treasurer recovered by the Attorney General from an action or  
5 settlement of a claim made by the Attorney General pursuant to  
6 this chapter or Chapter 1 (commencing with Section 17500) of  
7 Part 3 shall be deposited into this fund. Moneys in this fund, upon  
8 appropriation by the Legislature, shall be used by the Attorney  
9 General to support investigations and prosecutions of California's  
10 consumer protection laws, including implementation of judgments  
11 obtained from such prosecutions or investigations and other  
12 activities which are in furtherance of this chapter or Chapter 1  
13 (commencing with Section 17500) of Part 3. Notwithstanding  
14 Section 13340 of the Government Code, any civil penalties  
15 deposited in the fund pursuant to the National Mortgage Settlement,  
16 as provided in Section 12531 of the Government Code, are  
17 continuously appropriated to the Department of Justice for the  
18 purpose of offsetting General Fund costs incurred by the  
19 Department of Justice.

20 (e) If the action is brought at the request of a board within the  
21 Department of Consumer Affairs or a local consumer affairs  
22 agency, the court shall determine the reasonable expenses incurred  
23 by the board or local agency in the investigation and prosecution  
24 of the action.

25 Before any penalty collected is paid out pursuant to subdivision  
26 (c), the amount of any reasonable expenses incurred by the board  
27 shall be paid to the Treasurer for deposit in the special fund of the  
28 board described in Section 205. If the board has no such special  
29 fund, the moneys shall be paid to the Treasurer. The amount of  
30 any reasonable expenses incurred by a local consumer affairs  
31 agency shall be paid to the general fund of the municipality or  
32 county that funds the local agency.

33 (f) If the action is brought by a city attorney of a city and county,  
34 the entire amount of the penalty collected shall be paid to the  
35 treasurer of the city and county in which the judgment was entered  
36 for the exclusive use by the city attorney for the enforcement of  
37 consumer protection laws. However, if the action is brought by a  
38 city attorney of a city and county for the purposes of civil  
39 enforcement pursuant to Section 17980 of the Health and Safety  
40 Code or Article 3 (commencing with Section 11570) of Chapter

1 10 of Division 10 of the Health and Safety Code, either the penalty  
2 collected shall be paid entirely to the treasurer of the city and  
3 county in which the judgment was entered or, upon the request of  
4 the city attorney, the court may order that up to one-half of the  
5 penalty, under court supervision and approval, be paid for the  
6 purpose of restoring, maintaining, or enhancing the premises that  
7 were the subject of the action, and that the balance of the penalty  
8 be paid to the treasurer of the city and county.

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